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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/476,039	12/31/1999	JAMES W. JIMISON	JIM9901C	7226

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EXAMINER

CHIN, RANDALL E

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 01/16/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/476,039

Applicant(s)

JIMISON, JAMES W.

Examiner

Randall Chin

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 3, 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-8, 10, 13-16, 18-20, 23, 26 and 27 is/are rejected.
- 7) ☒ Claim(s) 9, 11, 12, 17, 24 and 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Mosely '756

Mosely '756 clearly discloses all of the recited subject matter as shown in Figs. 2 and 3. With respect to "cleaning and polishing" products, such a recitation merely involves intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Mosely further teaches in the Fig. 3 embodiment that bag or inner liner 9 is absorbent (see col. 3, lines 1-15) and outer bag 5 can be plastic film (see col. 1, lines 54-55).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 4, 5, 13, 14, 20, 23, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mosely '756.

Mosely discloses all of the claimed subject matter with the exception of the claimed specific thickness values set forth by claims 1, 4, 5, 13, 14, 23, 26 and 27. It is the position of the examiner that the claimed values are within the level of ordinary skill to select since applicant's specification fails to teach that the specific values solve any stated problem or is for any particular purpose. It would appear that Mosely's inner liner can function equally well as applicant's claimed inner liner since it appears to be very thin (Fig.3). As for claim 2, clearly Mosely's inner liner could be "removed", if one so desired. The use of graphics or logos on bags is not deemed to define patentable subject matter as recited by claim 20 since one of ordinary skill would find it obvious to provide graphics on a commercial fruit or vegetable bag simply for advertising purposes.

5. Claims 1, 2, 4-8, 10, 13-16, 18, 19, 23, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper '936.

The patent to Cooper '936 discloses with respect to claims 1 and 4-6 an apparatus comprising an elongated outer bag 10 having an opening, an inner liner 24 within the outer bag, the inner liner having a thickness of 0.7 mm which converts to 0.027 inches (col.2, lines 30-32), and a means for closing and securing the opening defined by tie 38 (Fig.3). As well as claim 6 is understood, Cooper teaches that printed

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material or graphics (black biohazard markings) could be on a surface thereof (col.2, lines 49-50). As for claims 7 and 8, Cooper teaches that the outer bag 10 is 100 microns in thickness (col.2, lines 13-16) which converts to 0.004 inches. Therefore, the thickness of a single layer of the outer bag (0.004 inches) and the thickness of a single layer of the inner liner (0.027 inches) have a combined thickness of 0.031 inches which falls within the recited ranges of claims 7 and 8. As for claims 23, 26 and 27, Cooper's inner lining 24 serves as the "at least one sheet of material". Cooper's inner liner is absorbent (see col.2, lines 55-60) and is folded (Fig.2).

With respect to "cleaning and polishing products, including fruits and vegetables", such a recitation merely involves intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Clearly, with the right motion of the bag with contents inside, one can carry out a "cleaning and polishing" function.

Allowable Subject Matter

6. Claims 9, 11, 12, 17, 24 and 25 define allowable subject matter.
7. Applicant's arguments with respect to claims 1, 2, 4-20 and 23-27 have been considered but are moot in view of the new ground(s) of rejection.

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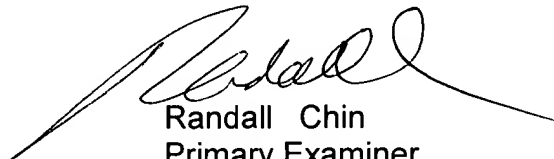
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Chin whose telephone number is (703) 308-1613. The examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



R. Chin
January 14, 2003



Randall Chin
Primary Examiner
Art Unit 1744